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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/734,655	12/11/2003	Christian Peter Behrenbruch	KEMP-011	8976
24353 7590 06/18/2007 BOZICEVIC, FIELD & FRANCIS LLP 1900 UNIVERSITY AVENUE SUITE 200 EAST PALO ALTO, CA 94303			EXAMINER AGWUMEZIE, CHARLES C	
			ART UNIT 3621	PAPER NUMBER
			MAIL DATE 06/18/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/734,655	BEHRENBRUCH ET AL.	
	Examiner	Art Unit	
	Charlie C. Agwumezie	3621	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 January 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 22-39 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 22-39 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>03/30/04</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on January 3, 2007 has been entered.

Status of Claims

2. Claims 1-21 has been cancelled.

Claims 22-39 are newly added.

Claims 2239 are pending in this application per the request for continued examination filed January 3, 2007.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 24-28, 30-39, are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Specifically these claims failed to further limit

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the method steps of administering, testing and selectively modifying as recited in the independent claim 22. Furthermore, **Claims 30-35, and 37 and 37-38** are rejected for reciting a system and a computer program respectively in a method claim. **Claim 36** is further rejected because it does not make sense if the processing subject is a plant.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

4. **Claim 37** is rejected under 35 U.S.C. 101 because it recites a computer program code that is not embodied in a computer readable medium. Therefore the claimed invention is directed to non-statutory subject matter.

Examiner's Recommendation

5. Examiner recommends that claim 29 be re-written in the following format and rolled up into claim 22: A method according to claim 22 wherein the processing apparatus comprises an analysis apparatus, the processing agent comprises an analysis agent, the analysis agent being administered to the analysis subject and detecting in response to the administering of the analysis agent a condition of the analysis subject as said process result.

Claim Rejections - 35 USC § 103

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6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 22-23, 29, and 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rabin et al U.S. Patent No. 6,697,948 B1.

As per **claim 22**, Rabin et al discloses a processing method comprising the steps of:

administering a processing agent substance to a subject chosen from a human being, a plant and an animal, the processing agent having a primary behavior effective in combination with a processing system to achieve a desired process result, the processing agent further having a distinctive signature characteristic distinguishing it from other processing agents (col. 15, lines 30-50; ...fingerprint process...);

testing for the distinctive signature characteristic of the processing agent using a test functionality of the processing system (col. 15, lines 30-50; ...verification program examines each fingerprint...);

selectively modifying subsequent operation of the processing system based on a result from the test for the distinctive signature characteristic of the processing agent (...detects modified software based on the fingerprint...).

What Rabin does not explicitly disclose is that the processing subject is chosen from a human being, a plant or an animal. However, by analogy one skilled in the art

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will can extend the Rabin's invention to cover subjects chosen from a human being, a plant and an animal. According it would have been obvious to one of ordinary skill in the art at time of applicant's invention to modify the method of Rabin by extending it processing subject chosen from a human being , a plant or an animal.

As per **claim 23**, Rabin et al further discloses a method, wherein the step of selectively modifying subsequent operation of the processing system comprises at least partially disabling output of the process result in the absence of the distinctive signature characteristic (col. 15, lines 50-60; ...disables the program...).

As per **claim 29**, Rabin further discloses a method, wherein the processing system comprises an analysis apparatus, the processing agent comprises an analysis agent and the processing subject is an analysis subject, the analysis agent being administered to the subject and having in relation thereto a primary behavior effective to reveal upon analysis by the analysis apparatus a condition of the analysis subject as said process result (col. 15, lines 30-60).

As per **claim 39**, Rabin further discloses a processing agent for use in carrying out the method and having in relation to a predetermined subject a primary behavior effective in combination with said processing system to achieve a desired process result, and further having a distinctive signature characteristic distinguishing it from other processing agents and distinguishable by said test functionality (col. 15, lines 30-60).

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The reference cited to Heckman U.S. Patent Application Publication No. 2002/0164063 A1 is a document considered relevant to the claimed invention.

Examiner's Note: Examiner has cited particular columns and line numbers in the references as applied to the claims below for the convenience of the applicant. Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested that the applicant, in preparing the responses, fully consider the references in entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the examiner.

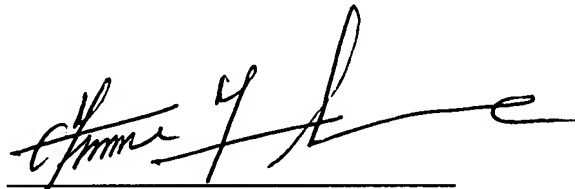
Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Charles C. Agwumezie** whose number is **(571) 272-6838**. The examiner can normally be reached on Monday – Friday 8:00 am – 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Andrew Fischer** can be reached on **(571) 272 – 6779**.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published

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applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



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Acc
June 8, 2007



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